



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY VALLEY REGIONAL OFFICE*

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### **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO SUMITOMO MACHINERY CORPORATION OF AMERICA FOR SUMITOMO VERONA Registration No.: 81768**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Sumitomo Machinery Corporation of America, regarding the Sumitomo Verona Facility for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, Regulations, and the Permit.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" means the Sumitomo Machinery Corporation of America facility, located at 18 Centerview Drive, Verona, in Augusta County, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "O&M" means operations and maintenance.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "Permit" means a minor New Source Review (NSR) permit to construct and operate a gear manufacturing facility at the Verona Facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Sumitomo on May 2, 2019, Registration No. 81768.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
11. "Sumitomo" means Sumitomo Machinery Corporation of America, a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Sumitomo is a "person" within the meaning of Va. Code § 10.1-1300.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Sumitomo owns and operates the Facility in Augusta County, Virginia. Sumitomo manufactures gearbox assemblies at the Facility. Sumitomo is the subject of the Permit which allows Sumitomo to construct and operate a stationary source of air pollution at the Facility.
2. On September 27, 2018, DEQ staff conducted a site visit at the Facility and observed an unpermitted paint booth and spray gun in operation. As a follow-up to this inspection and subsequent communications between DEQ staff and Sumitomo, Sumitomo submitted a Form 7 Air Permit Application to DEQ for the Facility on December 13, 2018. Sumitomo stated in the permit application that construction and operation at the Facility commenced in mid-2017 and early-2018, respectively.

3. 9 VAC 5-80-1120(A) states that no owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article.
4. 9 VAC 5-80-1210(E) states that any owner who constructs or operates a source subject to this section not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a source subject to this section who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.
5. On April 18, 2019, DEQ issued NOV No. AVRO001183-001 to Sumitomo. Sumitomo responded to the NOV by telephone conference on April 29, 2019, and by email dated May 17, 2019. In the letter attached to the email, Sumitomo reported installing the spray booth and spray gun at the Facility on April 9, 2018. During the meeting, Sumitomo asserted that it believed an exemption for the paint booth, originally issued for a differing facility, to Hansen Transmission, Inc., continued to apply. DEQ explained that exemption letters do not transfer facilities or locations.
6. DEQ issued the Permit to Sumitomo on May 2, 2019, resulting in correction of the violations described in paragraphs C(2) and C(5), above.
7. Based on the results of September 27, 2018 site visit, the April 29, 2019 meeting, and the documentation submitted on May 17, 2019, the Board concludes that Sumitomo has violated 9 VAC 5-80-1120(A) and 9 VAC 5-80-1210(E), as described in paragraphs C(2) through C(5), above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Sumitomo, and Sumitomo agrees to:

Pay a civil charge of \$15,860 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Sumitomo shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

If the Department has to refer collection of moneys due under this Order to the Department of Law, Sumitomo shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Sumitomo for good cause shown by Sumitomo, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Sumitomo admits the jurisdictional allegations and agrees not to contest, but does not admit, the findings of fact and conclusions of law contained herein.
4. Sumitomo consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Sumitomo declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Sumitomo to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Sumitomo shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Sumitomo shall demonstrate that such

circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Sumitomo shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Sumitomo. Nevertheless, Sumitomo agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. the Director or his designee terminates the Order after Sumitomo has completed all of the requirements of the Order;
  - b. Sumitomo petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Sumitomo.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Sumitomo from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Sumitomo and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Sumitomo certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Sumitomo to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Sumitomo.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Sumitomo voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4th day of June, 2020.

  
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Amy T. Owens, Regional Director  
Department of Environmental Quality

Sumitomo Machinery Corporation of America voluntarily agrees to the issuance of this Order.

Date: June 2, 2020 By: A.M. Eath, VP of Business Operations  
(Person) (Title)  
Sumitomo Machinery Corporation of America

Commonwealth of Virginia  
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 2nd day of June, 2020, by Anthony M. Bartlett who is VP of Business Operations of Sumitomo Machinery Corporation of America, on behalf of the corporation.

[Signature]  
Notary Public

7837010  
Registration No.

My commission expires: July 31, 2023

Notary seal:

